

Message Text

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C O N F I D E N T I A L CARACAS 4606

E.O. 11652: GDS

TAGS: ENRG, EINV, VE

SUBJECT: PETROLEUM NATIONALIZATION - STATUS OF UNRESOLVED ISSUES

REF: (A) CARACAS A-2, FEB. 22, 1977

1. SUMMARY. CONSIDERABLE PROGRESS HAS BEEN MADE TOWARD RESOLVING ONE OF THE ISSUES BETWEEN THE GOV AND THE EX-CONCESSIONAIRES REMAINING FROM PETROLEUM NATIONALIZATION, THAT OF DEDUCTIONS FROM THE GUARANTEE FUND FOR THE CONDITION OF ASSETS. PROGRESS HAS BEEN MUCH SLOWER WITH REGARD TO BACK TAX CLAIMS AND THE COMPTROLLER GENERAL'S TAX CLAIM. GOV OFFICIALS CONTINUE TO INSIST HOWEVER, THAT THEY EXPECT TO SETTLE ALL OF THESE ISSUES BY THE END OF 1977. END SUMMARY.

2. VARIOUS ASPECTS OF THE PETROLEUM NATIONALIZATION PROCESS HAD NOT BEEN RESOLVED WITH NATIONALIZATION OCCURRED AT THE END OF 1975. IN SPITE OF REPATED GOV ASSURANCES THAT THESE WOULD BE SETTLED QUICKLY, LITTLE PROGRESS WAS IN FACT MADE IN 1976, AND ABOUT ONE-HALF OF THE COMPENSATION PROMISED TO THE EX-CONCESSIONAIRES IS STILL HELD BY THE GOV IN A GUARANTEE FUND. GOV OFFICIALS, INCLUDING PRESIDENT PEREZ, NOW SAY THEY INTEND TO SETTLE THESE ISSUES BY THE END OF 1977. A PROGRESS REPORT ON THE THREE MAJOR ITEMS FOLLOWS. ADDITIONAL BACKGROUND ON THESE QUESTIONS WAS GIVEN IN REF A.

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3. THE PROCESS OF FIXING THE AMOUNT OF THE DEDUCTIONS TO BE MADE FROM THE GUARANTEE FUND FOR THE CONDITION OF THE NATIONALIZED ASSETS APPEARS TO HAVE SPEEDED UP. ALL FIELD EVALUATIONS ARE NOW SAID TO HAVE BEEN COMPLETED, AND THE RESIDENT REPRESENTATIVES OF THE EX-CONCESSIONAIRES ARE REVIEWING THESE EVALUATIONS POINT BY POINT WITH MARTIN MORALES, HEAD OF THE REVERSION OFFICE OF

THE MINISTRY OF ENERGY AND MINES. THEY DESCRIBE MORALES AS BEING INCREASINGLY WILLING TO LISTEN TO THEIR ARGUMENTS AGAINST SPECIFIC CLAIMS MADE BY THE FIELD INSPECTORS, SAYING THAT IN THOSE CASES WHERE THE COMPANY HAS BEEN ABLE TO MAKE A VALID TECHNICAL CASE AGAINST A CLAIM, MORALES HAS OFTEN ACCEPTED THE COMPANY'S POSITION. SOME COMPANIES HAVE ALREADY SIGNED, ALBEIT WITH DETAILED RESERVATION CLAUSES, PRELIMINARY AGREEMENTS WITH MORALES' OFFICE ON THE AMOUNT OF THE DEDUCTION, AND MOST EXPECT TO REACH THIS STAGE IN THE NEXT MONTH OR SO. THESE PRELIMINARY AGREEMENTS ARE EXPECTED TO BE PLACED BEFORE A "RECEPTION COMMITTEE" MADE UP OF THREE MINISTRY OFFICIALS AND ONE REPRESENTATIVE EACH OF THE EX-CONCESSIONAIRE, THE OPERATING COMPANY INVOLVED, AND PETROLEOS DE VENEZUELA. THIS COMMITTEE IS TO REVIEW THE PRELIMINARY AGREEMENTS AND MAKE RECOMMENDATIONS TO MINISTER OF ENERGY HERNANDEZ, WHO IS THEN TO DECIDE THE FINAL AMOUNT OF THE DEDUCTION.

4. ASSET DEDUCTIONS FOR THE INDIVIDUAL COMPANIES ARE NOW ESTIMATED TO RANGE FROM ABOUT 10 TO 45 PERCENT OF THE AMOUNTS GRANTED AS COMPENSATION AND FROM ABOUT 20 TO 55 PERCENT OF THEIR RESPECTIVE DEPOSITS IN THE GUARANTEE FUND. (SINCE THE AMOUNTS GRANTED AS COMPENSATION AND THE DEPOSITS IN THE FUND WERE NOT CALCULATED ON THE SAME BASES, THE RELATIONSHIP BETWEEN THE TWO IS NOT THE SAME FOR EACH COMPANY.) IN GENERAL, THE LARGER COMPANIES TEND TO FALL IN THE LOWER END OF THESE RANGES, RESULTING IN AN INDUSTRY AVERAGE (INCLUDING SHELL) WHICH WE ESTIMATE AT 15 PERCENT OF TOTAL COMPENSATION AND 25 PERCENT OF THE TOTAL DEPOSITS IN THE FUND.

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5. THOSE COMPANIES WHICH HAVE NOT YET REACHED AGREEMENT WITH MORALES MAY STILL BE ABLE TO OBTAIN SOME REDUCTIONS AT THAT LEVEL. COMPANIES MAY ALSO ATTEMPT TO PRESS FOR FURTHER REDUCTIONS IN THE RECEPTION COMMITTEE LEVEL OR FINALLY, WITH THE MINISTER HIMSELF, BUT MOST OF THE COMPANIES DO NOT SEEM OPTIMISTIC THAT SUCH APPEALS WILL RESULT IN SUBSTANTIAL DEDUCTIONS BEYOND THOSE AGREED TO BY MORALES AND THERE IS THE CONTINUING CONCERN THAT THE CLAIMS MAY BE INCREASED IN THESE FINAL STAGES. THE TIMING OF A FINAL DECISION IS STILL IN DOUBT, ALTHOUGH IT DOES APPEAR THAT THE DETAIL WORK IS NOW COMING TO AN END, AND THUS A RAPID SETTLEMENT MAY BE POSSIBLE.

6. IT IS NO LONGER EXPECTED THAT PAYMENTS FROM THE FUND WILL BE MADE ONCE THE ISSUE OF ASSET DEDUCTIONS IS SETTLED. THE COMPANIES HAVE NOW BEEN INFORMED THAT THE TWO OTHER MAJOR ISSUES, THAT OF BACK TAX CLAIMS AND THE COMPTROLLER GENERAL'S TAX CLAIM, ALSO MUST BE SETTLED BEFORE ANY BONDS WILL BE RELEASED.

7. SLOW PROGRESS IS APPARENTLY BEING MADE WITH RESPECT TO THE

BACK TAX CLAIMS ORIGINATING IN THE MINISTRY OF FINANCE. THESE ARISE PRIMARILY FROM DEDUCTIONS TAKEN BY THE COMPANIES ON THEIR INCOME TAX RETURNS FOR 1975 AND PREVIOUS YEARS WHICH HAVE BEEN QUESTIONED BY THE TAX AUTHORITIES. A THREE MAN WORKING LEVEL GROUP HAS BEEN ESTABLISHED, IN PLACE OF THE BLUE RIBBON PANEL ORIGINALLY ENVISIONED, TO REVIEW THESE CLAIMS. MANY OF THE COMPANIES EXPECT THIS REVIEW TO SERVE AS THE BASIS FOR A BLANKET SETTLEMENT ALONG THE TLINES OF THAT REACHED IN 1966, UNDER WHICH THE INES WOULD BE FORGIVEN AND THE COMPANIES WOULD AGREE TO PAY A PERCENTAGE OF THE TAX CLAIMS, WITH THIS FINAL SETTLEMENT ESTIMATED AT BETWEEN 25 AND 50 PERCENT OF THE TOTAL BACK TAX CLAIMS NOW OUTSTANDING.

8. THERE HAS BEEN LITTLE PROGRESS TO DATE ON THE COMPTROLLER GENER)'S BACK TAX CLAIM. EXXON'S APPEAL, THE FIRST TO BE FILED, WAS ACCEPTED BY THE LOWER COURT EARLY IN THE YEAR WITHOUT A REQUIREMENT THAT BOND BE POSTED. THIS WAS CONSIDERED AN CONFIDENTIAL

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IMPORTANT POSITIVE SIGN. A DECISION WAS EXPECTED FROM THIS COURT BY NOW BUT HAS NOT YET BEEN ANNOUNCED. IN ANY CASE, IT IS GENERALLY AGREED THAT THE CASE WILL BE TAKEN TO THE SUPREME COURT. AT THIS POINT, THE COMPANIES HAVE BEEN ASSURED THAT THE VENEZUELAN ATTORNEY GENERAL WILL ENTER THE CASE TO ARGUE AGAINST THE COMPTROLLER GENERAL'S CLAIM, AND THAT THIS PROCESS ALSO WILL BE COMPLETED BY THE END OF 1977.
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